

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF DELAWARE**

**JOHN H. BERGE, JR.,**

Petitioner,

V.

Civ. Act. No. 08-078-GMS

**MICHAEL DELOY, Warden,  
and the ATTORNEY GENERAL OF  
THE STATE OF DELAWARE.**

Respondents.

### MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, John H. Benge, Jr., has applied for federal habeas relief, challenging his guilty plea in Superior Court to a weapons offense and two counts of criminal contempt of a protection from abuse order. The answer to the petition was originally due May 5 (D.I. 7); respondents have obtained extensions of time to May 30, June 18, and July 3 in which to file the answer to the petition.

2. The case was initially assigned to Loren Meyers for preparation of the response. However, because of recurring illness on his part, including several days last week and on Monday July 7, the case has been reassigned to the undersigned. In order to familiarize herself with the case and prepare the answer, the undersigned anticipates that she will need until August 1.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of

time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9<sup>th</sup> Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has “the discretion to take into account various factors such as the respondent's workload” in determining the period of time that should be allowed to answer the petition.

4. This is respondents’ fourth request for an extension of time in this case.

5. Respondents submit that an extension of time to and including August 1, 2008, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Del. Bar. ID No. 3759

July 8, 2008

**RULE 7.1.1 CERTIFICATION**

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is in the custody of the Delaware Department of Correction and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan  
Deputy Attorney General

Counsel for Respondents

July 8, 2008

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Civ. Act. No. 08-078-GMS

**ORDER**

This \_\_\_\_ day of \_\_\_\_\_, 2008,

WHEREAS, respondents having requested an extension of time in which to file an answer,  
and

WHEREAS, it appearing to the Court that the requested extension is timely made and good  
cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before August 1,  
2008.

\_\_\_\_\_  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2008, I electronically filed a motion for extension of time with the Clerk of Court using CM/ECF. I also hereby certify that on July 8, 2008, I have caused to be delivered by the United States Postal Service the same document to the following non-registered participant:

John H. Benge, Jr.  
SBI No. 494395  
Sussex Correctional Institution  
P.O. Box 500  
Georgetown, DE 19947

/s/ Elizabeth R. McFarlan  
Deputy Attorney General  
Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8500  
Del. Bar. ID No. 3759  
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